*THE HON'BLE Ms. JUSTICE G. ROHINI

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+W.P.Nos.4326 of 2002 & 14856 of 2003

% Dated 27-1-2006

H.H. Arjun Doss Mahant,

Disciple of Guru Devender Dass,

48 years, Sri Swamy Hatiramji Math,

Tirumala, Tirupati. **Petitioner**

(in both the W.Ps.)

And

$ The Commissioner of Endowments

Endowment Department, Tilak Road,

Hyderabad and two others. Respondents

(in both the W.Ps.)

! Counsel for Petitioner : Sri K. Prabhakar

Sri S.Ramachandra Rao (Senior Counsel)

^Counsel for Respondents: G.P. for Endowments

Mr. K.V.N. Bhoopal (for R.3 in W.P.No.14856 of 2003.

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? Cases referred

1. AIR 1954 SC 282;
2. AIR 1954 SC 388;
3. AIR 1970 SC 181;
4. (1996) 8 SCC 705;
5. AIR 1959 SC 149;
6. AIR 1986 SC 180;
7. AIR 1969 SC 1297;
8. 2002 (2) Supreme Today 393
9. AIR 1973 SC 268.

THE HON'BLE Ms. JUSTICE G. ROHINI

W.P.Nos.4326 OF 2002 & 14856 OF 2003

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COMMON ORDER:

The petitioner in these two Writ Petitions is the Mahanth of Sri Swamy Hathiramji

Mutt, Tirumala Tirupati.

W.P.No.4326 of 2002 has been filed aggrieved by the action of the Commissioner of Endowments, A.P., Hyderabad in continuing the Special Grade Deputy Collector appointed by the
Government as the Custodian for managing the secular affairs of Sri Swamy Hathiramji mutt including administration of its properties.

During the pendency of the said writ petition, the Government of A.P. passed an order dated 10-07-2003 setting aside the proceedings of the Commissioner dated 6-7-2000 whereunder permission was accorded to the petitioner to succeed to the office of the mathadhipathi of Sri Swamy Hathiramji Mutt. The said order dated 10-07-2003 is under challenge in W.P.No.14856 of 2003.

Since the parties to both the writ petitions are common and since both the writ petitions are based on the same set of facts involving common questions of fact and law, they are heard together and decided by this common order.

The relevant facts, as can be noted from the affidavits filed in support of the writ petitions, are as under:

Sri Swamy Hathiramji Mutt (hereinafter referred to as Mutt) is an historical mutt in South India. It was under the Mahantship of Shree Prayagdossji varu, who expired on 5th October, 1947. Subsequently, there appears to have arisen differences amongst his disciples being 1. Narayandosjee Varu, 2. Raghuvaradossji Varu, 3. Chetandossji Varu, 4. Hariramdossji Varu and 5. Bhagwandossji Varu as regards succession to the Mahantship of Sree Swamy Hathiramji Mutt, Tirupati. The said differences were ultimately resolved amongst them and an agreement dated 29th October, 1947 came into existence between the aforesaid five disciples of late Prayagdossji Varu. The said agreement has been registered with Sub-Registrar of Madras, Chengalpet on 31st October, 1947 as Document No.3481 of 1947. In the said Agreement, it was acknowledged and confirmed that Sree Swamy Hathiramji

Mutt has several properties in the presidencies of Madras and Bombay, Bangalore City, Andhra, Tirupati, Adoni, Tanjore, Vellore and elsewhere in India which were being managed from the main Mutt at Tirupati. The mode of succession of the Mahantship of Sree Swamy Hathiramji Mutt has also been provided for and confirmed and acknowledged by the signatories to the said Agreement, in total conformity with the customs, usage and precepts founded by the said Sri Swamy Hathiramji. The Akhada Panchayat was to be controlling the activities of the said Mutt. By virtue of the said agreement Narayandosji Varu was appointed as the Mahant of Sri Swamy Hathiramji Mutt at Tirupati. On 9th December, 1958 Mahant Narayandossji Varu attained Samadhi, and Sri Devenderdass succeeded as Mahant. However, subsequently he resigned from the Mahantship and Sri Sarjudass, who was a disciple of Sri Devenderdass, succeeded as Mahant. It appears that in the year 1983 he was removed by the Government as Mahant on certain allegations of mismanagement and misappropriation of mutt properties. Consequently, a permanent vacancy in the office of mathadhipathi arose, however since there was no nomination as to the succession to the office made by Sri Sarjudass while he was in office, in exercise of the powers conferred by Section 8 read with Section 47 of the Act 17 of 1966, the Commissioner of Endowments vide proceedings dated 27-12-1983 appointed the Assistant Commissioner of Endowments as the Custodian of the Mutt to administer and maintain the affairs of the Mutt till Mathadhipathi succeeds to the office according to the provisions of Act 17 of 1966. Subsequently, Sri Arjundass, the petitioner herein, who is also one of the disciples of Sri Devenderdass Ji, was appointed as interim Mahant of the Mutt by the Government of Andhra Pradesh by proceedings dated 7-9-1990 making it clear that he shall confine himself to religious activities and that the officer of the Endowments Department will be continued to look after all the secular affairs and other administrative matters pertaining to the mutt. The said appointment as interim Mahant was made on the basis of a declaration made by Sri Devenderdass Ji stating that he had no objection for the nomination of Sri Arjundass as Mahant and also on the basis of a resolution passed by the renovation committee of the mutt to appoint a temporary Mahant. While so, Sri Sarjudass passed away on 20-10-1999. Thereafter, the petitioner made a representation claiming that he was a fit person to hold the permanent mahantship of the mutt as laid down under Section 53 of The A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short, ‘the Act’). In pursuance thereof, the Commissioner of Endowments having

called for a report from the custodian of the mutt and having found that the petitioner was the only available claimant and that while functioning as interim Mahant he was performing religious functions in a befitting manner and co-operating for smooth running of the administration of the mutt, vide proceedings dated 6-7-2000 accorded permission to the petitioner to succeed to the office of Mathadhipathi under Section 53 (1) of the Act. However, by separate proceedings passed on the same day i.e., 6-7-2000 the Commissioner of Endowments ordered that the Special Grade Deputy Collector appointed by the Government would continue as custodian of the Mutt for managing the secular affairs and for safeguarding the Mutt and its properties. In the said proceedings, it was mentioned that the officer was being continued since the administration of the secular affairs of the Mutt was found not in accordance with the established principles in the hands of the successive mathadhipathis in the recent past and in view of the consent given by the petitioner, who succeeded to the office of Mathadhipathi, for appointment of an officer to manage the secular affairs of the mutt.

The petitioner assumed charge as Mahant of the Mutt on 18-7-2000 and the Pattabhishekam was also performed on 8-10-2000. It is not in dispute that for the purpose of Pattabhishekam, the Commissioner of Endowments vide proceedings dated 6-9-2000 and 22-9-2000 accorded permission to the custodian to incur necessary expenditure in consultation with the Mahant.

However, since the custodian was continued to deal with the management of the Mutt and the petitioner was confined to mere religious activities, the petitioner filed W.P.No.4326 of 2002 seeking a writ of Mandamus directing the Commissioner of Endowments to remove the custodian and direct him to hand over the charge of the Mutt including administration of properties of the Mutt. In the said writ petition, it was also alleged that the custodian was mismanaging the properties of the Mutt and that he was unable to administer the affairs of the mutt properly, maintaining the sanctity of the mutt.

This Court while directing *Rule Nisi,* by order dated 5.07.2002 in W.P.M.P.No.5379 of 2002 granted an interim direction to the Custodian (2nd

respondent therein) to forthwith handover the management of the Mutt and take all necessary steps for transferring power to the petitioner. Against the said order, the respondents filed W.A.No.1135 of 2002, which was allowed by a Division Bench of this Court by judgment dated 24.07.2002, thereby setting aside the order dated 5.07.2002 and directing that the Writ Petition itself be heard and decided.

During the pendency of the said Writ Petition, the State Government issued proceedings dated 10.10.2002 calling upon the petitioner to show cause as to why his appointment as permanent Mahant should not be cancelled. Aggrieved by the same, the petitioner moved W.P.M.P.No.29492 of 2002 in W.P.No.4326 of 2002 seeking suspension of the operation of the notice dated 10.10.2002. Having regard to the fact that the impugned notice was only a show cause notice, this Court by order dated 25.11.2002 granted liberty to the petitioner to submit appropriate explanation to the show cause notice and directed the Government of Andhra Pradesh to dispose of the matter within 8 weeks from the date of receipt of the explanation, after affording an opportunity of hearing to the petitioner as well as the representative of the Commissioner of Endowments. It was also ordered that till such time, the respondents shall not disturb the petitioner. Accordingly, the petitioner submitted his explanations dated 28.10.2002 and 7.12.2002. However, the Government by order dated 10.07.2003 held that the appointment of the petitioner as permanent Mahant was in gross violation of the statutory provisions and accordingly set aside the order of the Commissioner dated 6.7.2000 and directed the Commissioner to fill up the office of the Mahant and make interim arrangement in accordance with law. Questioning the said order, W.P.No.14856 of 2003 has been filed by the petitioner.

Rule Nisi was ordered on 23.07.2003 in W.P.No.14856 of 2003 and in W.P.M.P.No.18395 of 2003 this Court granted interim suspension of the impugned order dated 10.07.2003.

I have heard Sri S. Ramachandra Rao, the learned Senior Counsel appearing for the petitioner as well as Sri A. Satya Prasad, the learned Government Pleader on behalf of the learned Advocate General appearing for the respondents.

The learned Senior Counsel appearing for the petitioner vehemently contended that since the Mahant of a Math is the supreme authority and the ultimate head of the Math, as per the well settled principles of law he shall be vested with the right to manage both the secular affairs as well as the religious functions and therefore the custodian appointed earlier to administer and maintain the secular affairs of the mutt cannot be continued any longer on any ground whatsoever.

The learned Senior Counsel further contended that the order dated 10.07.2003 which was passed purportedly in exercise of *suo motu* powers of Revision under Section 93 of the Act amounts to fraud on the statute. The learned Senior Counsel while contending that exercise of *suo motu* powers of revision with regard to the matters relating to a Math or specific endowment attached to the Math have been expressly excluded under Section 93 of the Act, submitted that the order dated 10-07-2003, on the face of it, is without jurisdiction.

The learned counsel also submits that since the petitioner has succeeded to the office of Mathadhipathi of the Mutt following the procedure under Section 53(1) of the Act, he can be removed from the Office of Mathadhipathi only if he suffers any of the disqualifications enumerated under Section 51(1) of the Act. The learned Senior Counsel further contends that even on merits the impugned order is *ex facie* arbitrary and illegal since all the allegations made against the petitioner are imaginary and without any factual basis.

The learned Government Pleader appearing for the respondents contended that the finding recorded in the impugned order that the appointment of the petitioner as Mathadhipathi was in gross violation of the statutory rules is in accordance with law and does not warrant any interference by this Court. The learned Government Pleader while relying upon the definition of “Math” under Section 2 (17) of the Act and the definition of “trustee’ under Section 2 (29) of the Act, contended that the Government in exercise the *suo motu* powers of review under Section 93 of the Act though cannot call for the record of mathadhipathi, but is entitled to examine the record relating to any order or decision of the Commissioner even with regard to a

Math or specific endowment attached to a Math.

Having regard to the above submissions made by the learned Counsel, the following questions arise for consideration:

1. *Once a permanent vacancy in the office of Mathadhipathi is filled up, is it open to the respondents to confine the Mathadhipathi only to religious functions and to entrust the secular affairs of the math including the management of its properties to an official of the Government?*

2. *Whether the order passed by the Government dated 10-07-2003 purportedly in exercise of suo motu revisional powers under Section 93 of the Act thereby setting aside the order of the Commissioner of Endowments according sanction to the petitioner to succeed to the office of Mathadhipathi is valid?*

POINT No.1:-

At the outset, it would be appropriate to refer to the relevant provisions relating to Maths and specific endowments attached thereto under the Act.

Section 2 (17) defines "**Math**" as under :

'Math' means a Hindu Religious Institution presided over by a person, whose principal duty is to engage himself in the teaching and propagation of Hindu religion and philosophy or the teachings and the philosophy of the denomination, sect or sampradaya to which the math belongs and in imparting religious instruction and training and rendering spiritual service or who exercises or claims to exercise spiritual headship over a body of disciples; and includes any place or places of religious worship, instruction or training which are appurtenant to the institution.

Section 2 (23) defines "**Religious Institution**" as under :

'Religious Institution' means a math, temple or specific endowment and includes a Brindavan, Samadhi or any other institution established or maintained for a religious purpose.

Section 2 (27) defines "**Temple**" as under :

> *'Temple' means a place by whatever designation known used as a place of public religious worship, and dedicated to, or for the benefit of, or used as a right by the Hindu community or any section thereof, as a place of public religious worship sub-shrines, utsava madapas, tanks and other necessary appurtenant structures and land;*
>
> *Explanation I :- … … … … …*

Under Chapter V of the Act which specifically deals with Maths and Specific Endowments attached thereto, Section 47 defines "**Mathadhipathi**" as under :

> *In this chapter, unless the context otherwise requires, "Mathadhipathi" means any person whether known as mahant or by any other name, in whom the administration and management of a math or specific endowment attached to a math are vested.*

It is also relevant to note Section 48 which exempts the maths from certain sections of Chapter III.

> *"**48. Certain Sections of Chapter-III not to apply to maths or specific endowments attached thereto :--** The provisions of Sections 18, 19, 20, 21, 22, 25 and 28 shall not apply to math or specific endowment attached thereto."*

Section 51 of the Act which deals with removal of Mathadipati runs as under :

> *"**51. Removal of Mathadhipathi : --** (1) The Commissioner may suo motu or on an application of two or more persons having interest initiate proceedings for removing a mathadhipathi or a trustee of a specific endowment attached to a math, if he, --*
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> *(a) is of unsound mind;*
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> b. *is suffering from any physical or mental defect or infirmity which renders him unfit to be a mathadhipathi or such trustee;*
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> c. *has ceased to profess the Hindu religion or the tenets of the math;*
>
> d. *has been sentenced for any offence involving moral turpitude, such sentence not having been reversed;*

e. *is guilty of breach of trust, or mis-appropriation in respect of any of the properties of the math;*

f. *commits persistent and willful default in the exercise of his powers or performance of his functions under this Act;*

(g) violate any of the restrictions imposed or practices enjoined by the custom, usage or the tenets of the math, in relation to his personal conduct, such as celibacy, renunciation and the like;

h. *leads an immoral life; or*

i. *fails or ignores to implement the principles set out in Clause (17) of Section 2.*

(2) The Commissioner shall frame a charge on any of the grounds specified in sub-section (1) against the mathadhipathi or trustee concerned and give him an opportunity of meeting such charge, of testing the evidence adduced and of adducing evidence in his favour. After considering the evidence adduced and other material before him, the Commissioner may, by order exonerate the mathadhipathi or trustee, or remove him. Every such order shall state the charge framed against the mathadhipathi or the trustee, his explanation and the finding on such charge together with the reasons therefor :

Provided that in the case of a math or specific endowment attached thereto whose annual income exceeds rupees one lakh, the order of removal passed by the Commissioner against the mathadhipathi or trustee shall not take effect unless it is confirmed by the Government.

(3) Pending the passing of an order under sub-section (2); the Commissioner may suspend the mathadhipathi or the trustee.

(4) (a) Any mathadhipathi or trustee aggrieved by an order passed by the Commissioner under sub-section (2), may within ninety days from the date of receipt of such order, institute a suit in the court against such order;

(b) An appeal shall lie to the High Court within ninety days from the date of a decree or order of the Court in such suit."

On a combined reading of definitions of Math, Religious Institution and Temple, it is to be noted that the math is distinctly different from the temple. Though math is a religious institution, the main function of the math is teaching and propagation of Hindu religion and philosophy, sect or sampradaya to which the math

belongs, whereas Temple is a place used as a place of public religious worship and dedicated to or used as a right by the Hindu community of any section thereof as a place of public religious worship.

The scheme of the Act as can be noted from the above referred provisions shows that the entire administration of a math both in respect of religious as well as secular functions are vested with the mathadhipathi since the same are blended together and inseparable. In view of the said patent distinction, it appears that under Section 48 of the Act, the provisions of Sections 18, 19, 20, 21, 22, 25 and 28 under Chapter III dealing with Religious Institutions and Endowments are made inapplicable to the maths. Under Chapter V of the Act, a complete different set of provisions are incorporated so far as Maths and specific endowments attached thereto are concerned.

In COMMR., H.R.E. v. L.T. SWAMIAR (known as First Shirur Math Case) the Supreme Court while dealing with the provisions under the Madras Hindu Religious and Charitable Endowments Act, 1951 considered in detail the rights of Mahanth of Math and the conception of Mahanthship. The said case related to the Shirur Math and the matter came to the Court with regard to the validity of a scheme framed for the administration of the affairs of the said Math. The Supreme Court having dealt with the rights of a Mahant to hold office as well as enjoy the property of the institution, exhaustively held that in the conception of Mahantship as in Shebaitship both the elements of office and property of duties and personal interest are blended together and neither can be detached from the other. It was also held that Mahanthship is not heritable like ordinary property. It was further observed that a Mahant's duty is not simply to manage the temporalities of a Math and that he is the head and superior of spiritual fraternity and the purpose of Math is to encourage and foster spiritual training by maintenance of a competent line of teachers who could import religious instructions to the disciples and followers of the Math and try to strengthen the doctrines of the particular school or order of which they profess to be adherence.

The Supreme Court further observed that besides the right to manage its own affairs in matters of religion, which is given by Article 26 (b) of the Constitution of India, the next two Clauses of Article 26 guarantee to a religious denomination the right to acquire and own property and to administer such property in accordance with law.

In RATILAL vs. STATE OF BOMBAY, the Supreme Court, while considering the scope and object of Clauses (b) and (d) of Article 26 of the Constitution of India, observed as under :

> *"So far as Article 26 is concerned, it deals with a particular aspect of the subject of religious freedom. Under this Article, any religious denomination or a section of it has the guaranteed right to establish and maintain institutions for religious and charitable purposes and to manage in its own way all affairs in matters of religion. Rights are also given to such denomination or a section of it to acquire and own movable and immovable properties and to administer such properties in accordance with law.*
>
> *The language of the two cls. (b) and (d) of Article 26 would at once bring out the difference between the two. In regard to affairs in matters of religion, the right of management given to a religious body is a guaranteed fundamental right which no legislation can take away. On the other hand, as regards administration of property which a religious denomination is entitled to own and acquire, it has undoubtedly the right to administer such property but only in accordance with law. This means that the State can regulate the administration of trust properties by means of laws validly enacted; but here again it should be remembered that under Art. 26 (d), it is the religious denomination itself which has been given the right to administer its property in accordance with any law which the State may validly impose. A law, which takes away the right of administration altogether from the religious denomination and vests it in any other or secular authority, would amount to violation of the right which is guaranteed by Art. 26 (d) of the Constitution."*

The said principle has been reiterated in a later decision in DIGYADARSAN R.R. VARU v. STATE OF A.P. as under :

> *"Under Article 26 (b), therefore, a religious denomination or organization enjoys complete autonomy in the matter of deciding as to what rights and ceremonies are essential according to the tenets of*

the religion and no outside authority has any jurisdiction to interfere with its decision in such matters. Moreover under Article 26 (d) it is the fundamental right of a religious denomination or its representative to administer its property in accordance with law; and the law; therefore, must leave the right of administration to the religious denomination itself subject to such restrictions and regulations as it might choose to impose. It was further laid down that a law which takes away the right of administration from the hands of a religious denomination altogether and vests it in any other authority would amount to a violation of the right guaranteed under Clause (d) of Article 26."

In the above decision, the Supreme Court, while considering different provisions under The A.P. Charitable and Hindu Religious Institutions & Endowments Act 17 of 1966, particularly Section 47, which provided for the filling of a temporary vacancy, further observed as under :

"As regards the contravention of Clauses (b) and (d) of Article 26, there is nothing in Sections 46 and 47 which empowers the Commissioner to interfere with its autonomy of the religious denomination in the matter of deciding as to what rights and ceremonies are essential according to the tenets of the religion the denomination professes or practices nor has it been shown that any such order has been made by the Commissioner or that the Assistant Commissioner who has been put in charge of the day-to-day affairs is interfering in such matters. Section 47 of the Act deals only with a situation where there is a temporary vacancy in the office of the mathadhipathi by reason of any dispute in regard to the right of succession to the office or the other reasons stated therein as also because the mathadhipathi has been suspended pending an enquiry under Section 46. Its provisions do not take away the right of administration from the hands of a religious denomination altogether and vest it for all times in a person or authority who is not entitled to exercise that right under the customary rule and custom prevailing in the math."

It is also relevant to note the following observations made by the Supreme Court in SRI SRI SRI LAKSHAMANA YATENDRULU v. STATE OF A.P. in which the Court was dealing with the provisions under The A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (30 of 1987).

"Chapter V of the Act deals with maths and specific endowments attached thereto. Section 47 defines 'mathadhipathi' to mean any

person whether known as Mahant or by any other name in whom "the administration and management of a math or specific endowment attached to a math are vested". In the concept of mathadhipathi, both the elements of power to hold property and duty to properly maintain it are blended and neither can be detached from the other. The Mahant, therefore, as the spiritual head of the math is entrusted with the administration and management of the math or the specific endowment. The personal or beneficial interest of the Mahant in the endowment attached to the math is manifested in his power of administration and disposal of the property. His right to administer and manage the property endowed to the math and other rights of similar character are vested in the office of the Mahant and, therefore, they are legal rights attached to the management and the administration of the property endowed to the math. He holds the office by custom and usage of the institution. He acts for the benefit of the institution of which he is the head. The Mahant as an ascetic holds the property and, therefore, it is not heritable like ordinary devolution of the property since he has completely severed all his mundane connections with his natural family; cut off from the mundane affairs and is ordained to impart religious education to his disciples and teaching of the religious scriptures etc. to the followers of the religion or the sect. Therefore, the ordinary rules of succession to Mahantship do not apply."

In the light of the above well-settled principles of law with regard to the rights of the mathadhipathis, undoubtedly the State cannot claim any power or authority to take over the management of the math by separating the religious functions and secular affairs of the math. No doubt, in cases of misconduct or mismanagement of the properties by the mahanth, it is open to the State to initiate action under Section 51 of the Act which provides for removal of mathadhipathi. However, the said provision, under no circumstances, can be held to have conferred power on the State to continue a custodian to manage the secular affairs of the math indefinitely, in spite of the fact that the vacancy of a mathadhipathi has been filled up on permanent basis under Section 53 of the Act.

In the case on hand, the order dated 6-7-2000 shows that the Commissioner of Endowments ordered that the custodian shall be continued for managing the secular affairs of the Mutt on two grounds namely (1) that the administration of the secular affairs of the math at the hands of the successive mathadhipathis was found not in accordance with the established principles in the recent past; and (2) that the

petitioner himself had given his consent for appointment of an officer to manage the secular affairs of the mutt.

It is relevant to note that there is absolutely no allegation of any mismanagement of the properties of the mutt by the petitioner at any point of time. On the other hand, the custodian himself had reported that the petitioner was functioning in a befitting manner and cooperating with the smooth running of the administration of the mutt, and on the basis of the said report dated 30.09.1999, the Commissioner of Endowments accorded sanction for appointment of the petitioner on permanent basis under Section 53 of the Act.

The learned Government Pleader does not dispute the fact that the allegation of mismanagement of properties was only against the predecessors of the petitioner, but not against the petitioner. No other material has been placed before this Court to show that the petitioner herein ever indulged in any mismanagement or misappropriation of the properties of the mutt. At any rate, Section 51 (1)(e) of the Act specifically provides for removal of Mathadhipathi if he is guilty of breach of trust, or misappropriation of any property of the math. Section 51(1) also specifies the other grounds on which the Mathadhipathi can be removed. Hence, in case it is established that the petitioner has indulged in any such activities, it is always open to initiate appropriate proceedings under Section 51 of the Act.

It is also relevant to note that under the proceedings dated 27.12.1983 an official of the Endowment Department was appointed as a custodian, only till a Mathadhipathi succeeds to the office according to the provisions of the Act 17 of 1966. As such, having accorded permission to the petitioner to the office of mathadhipathi in terms of Section 53 of the Act and particularly in the absence of any allegation of mismanagement or misappropriation of the properties of the mutt by the petitioner, there is absolutely no justifiable reason to continue the custodian to manage the secular affairs of the mutt after the petitioner assumed charge as mathadhipathi.

So far as the other ground i.e., the petitioner himself consented to have the affairs managed by the officials is concerned, it is to be noted that the so-called consent by the petitioner in his representation dated 11-7-1996 runs as under :

> *"I have no objection if an officer in the cadre of Assistant Commissioner or Superintendent is appointed to assist me in day-to-day administration of the matters of Mutt."*

Thus, it is clear that the petitioner agreed only to be assisted by an official and it is ununderstandable how the same can be termed as consent for appointment of a Custodian to manage the secular affairs of the mutt for ever.

At any rate, as held by the Supreme Court BASHESHAR NATH v. I.T. COMMR. and OLGA TELLIS v. BOMBAY MUNICIPAL CORPORATION, the right to manage the math, being a fundamental right guaranteed under Article 26 of the Constitution of India, cannot be abdicated or waived even with consent.

The respondents in their counter-affidavits could not point out any valid and justifiable reason to continue the custodian except stating that the estimated value of the land and other properties of the Mutt under litigation, exceeds Rs.1,000 crores and various suits were pending in Tirupati, Hyderabad, Chennai, Mumbai, Delhi, Bangalore and etc., and in order to protect the properties, safeguarding the interests of the mutt and to effectively prosecute the various cases, an Administrative Officer had been appointed.

As expressed above, the law does not provide for any splitting of office of mathadhipathi into religious functions and administrative affairs and the ingredients of both religious and secular duties are blended together in the rights of a Mahant. Therefore, the petitioner has a right to manage the properties of the mutt so long as he is entitled to hold the office of mathadhipathi. Hence, the impugned action of the Commissioner of Endowments in continuing the custodian to manage the secular affairs of the mutt and its properties even after the petitioner assumed the office of

mathadhipathi is illegal being contrary to the scheme of the Act, particularly the provisions of Section 53 of the Act which contemplates filling of permanent vacancy in the office of mathadhipathi without any conditions.

POINT No.2 :-

It is not in dispute that the writ petitioner has succeeded to the office of mathadhipathi in pursuance of the proceedings of the Commissioner of Endowments, dated 6-7-2000 whereunder permission was accorded to the petitioner to succeed to the office of mathadhipathi of the mutt under Section 53 (1) of the Act. In the said proceedings, it was observed that according to the report of the custodian of the mutt dated 30-09-1999 the petitioner was the only available claimant and that the other disciple who was removed from mahantship expired and Sri Devedardass, the guru of the petitioner who also resigned from the mahantship was functioning as 'Adhikari' in the same mutt and that the petitioner while functioning as interim Mahant was performing religious functions in a befitting manner and giving blessings to the visiting disciples and was also co-operating for smooth running of the administration of the mutt. It was further observed that by virtue of the resignation of Sri Devendardass and due to the death of Sri Sarjudasss, disciple of Sri Devederdass, a permanent vacancy occurred in the office of mathadhipathi and the person next entitled to succeed as laid down in Section 53 of the Act had to succeed to the office of the mathadhipathi with the permission of the Commissioner, and accordingly the petitioner who was functioning as interim Mahant and who was a chela of Sri Devendardass was permitted to succeed to the office of the mathadhipathi under Section 53 of the Act.

In pursuance thereof, the petitioner assumed charge as mathadhipathi and pattabhishekam was also performed. Thereafter, the petitioner raised a claim that he should be allowed to manage the affairs of the mutt both religious and secular and protested against the continuation of the custodian for managing the secular affairs of the mutt. While W.P.No.4326 of 2002 filed by the petitioner seeking a direction for removal of the custodian is pending, the proceedings for removal of the petitioner were initiated suo motu by the State Government under Section 93 of the Act, mainly on the ground that the appointment of the petitioner as a regular Mahant was without following the statutory procedure laid down in Act 30 of 1987.

The relevant portion from the show cause notice dated 10-10-2002 with regard to the alleged violation of statutory provisions may be extracted hereunder :

> *"When the matter stood thus, Sri Arjundas applied to the Commissioner of Endowments on 22.06.1999 for appointing him as permanent Mathadhipathi of the Math. For such appointment of Mathadhipathi Chapter-V of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 provides a certain procedure. Section 53 provides for filling up of a permanent vacancy in the Office of Mathadhipathi and under Section 53(2) the qualifications required for the post are set out. The succession to the Office is governed by the rules of succession laid down by the founder and where there is no such rule, according to the usage or custom of the Math. Section 54 contemplates nomination of successor by the Mathadhipathi. In the present case, there was o such nomination. In the absence of nomination, the successor has to be chosen in accordance with the requirements of Section 54(2). The Commissioner has to convene a meeting after due publication, with the Mathadhipathis of other Maths belonging to the same Sampradaya and the disciples of the Math and then recognized the person nominated at such meeting, as Mathadhipathi. The procedure for convening a meeting etc., are contained in the rules. The concerned rules have not been kept in mind by the Commissioner. Rule 3(1) sets out qualifications required of the Mathadhipathi. Rule 3(2) sets out the matters in regard to which the Commissioner should satisfy himself. Rule 7 expressly requires that the successor Mathadhipathi shall give an undertaking in the form specified by the Commissioner to safeguard the interests of the Math. Rule 8 refers to the meeting provided under Section 54. None of these Rules have been observed. There was wholesale transgression of the requisite procedure. Giving a go-bye to this entire procedure and without satisfying himself that Sri Arjundas had requisite qualification to be appointed as Mathadhipathi, the Commissioner of Endowments has by his proceedings dated 6.07.2000 has recognized Sri Arjundas as permanent Mathadhipathi of the Math. No undertaking was taken from him as required by Rule 7. Therefore, the order of Commissioner, Endowments Department, Hyderabad appears to be illegal."*

Though the petitioner submitted his explanation stating that since he was a disciple of Sri Devender Dass and that he succeeded to the office of Mathadhipathi following due process of law, the same was not accepted and consequently the impugned order dated 10-07-2003 was passed by the State Government allowing the Revision and thereby setting aside the proceedings of the Commissioner of Endowments dated 6-7-2000.

The said order is questioned by the petitioner in W.P.No.14856 of 2003 mainly on three grounds viz., 1) that the *suo motu* powers of revision under Section 93 of the Act cannot be exercised so far as maths are concerned, and therefore, the impugned order is without jurisdiction; 2) that even assuming that such power is available, the *suo motu* proceedings initiated after more than two years are barred by limitation; 3) and that the allegation on which the impugned order was passed i.e., the appointment of the petitioner was in gross violation of the Statutory Rules issued in G.O.Ms.No.218, dated 17-03-1988 is incorrect and without any basis.

At the outset, Section 93 of the Act which deals with the power of revision conferred on the Government may be extracted hereunder:

> "**93. Power of Government to call for records and pass orders:-**
>
> *(1)* ***The Government may either suo motu or on an application call for and examine the record of the Commissioner*** *or any Deputy Commissioner or any Assistant Commissioner or any other Officer subordinate to them* ***or of any Executive Officer or any trustee of a Charitable or religious institution or endowment,*** **other than a math or specific endowment attached to a math** ***in respect of any administrative or quasi-judicial decision taken or order passed under this Act****, but not being a proceeding in respect of which a suit or an appeal or application, or a reference to Court is provided by this Act, to satisfy themselves as to the correctness, legality or propriety of such decision or order taken or passed, and if in any case, it appears to the Government that such decision or order should be modified, annulled, reversed or remitted for reconsideration they may pass orders accordingly.* ***(emphasis supplied)***
>
> *Provided that the Government shall not pass any order prejudicial to any party unless he has had an opportunity of making his representation.*
>
> *(2) … … … …. ….*
>
> *(3) .. … … … …*
>
> *(4) Every application to the Government for the exercise of their powers under this section shall be made within ninety days from the date on which the decision or order to which the application relates was received by the applicant."*

The learned Senior Counsel appearing for the petitioner contends that a bare

reading of Section 93 itself makes clear that the said provision cannot be made applicable to a math or specific endowment attached to a math and therefore powers of revision under Section 93 of the Act cannot be exercised so far as the maths and the matters relating to the maths.

For proper appreciation of the above submissions made by the learned Counsel, it is necessary to note the definitions of 'math', 'religious institution' and 'trustee' as defined under Section 2 of the Act.

Section 2 (17) defines "**Math**" as under :

'Math' means a Hindu Religious Institution presided over by a person, whose principal duty is to engage himself in the teaching and propagation of Hindu religion and philosophy or the teachings and the philosophy of the denomination, sect or sampradaya to which the math belongs and in imparting religious instruction and training and rendering spiritual service or who exercises or claims to exercise spiritual headship over a body of disciples; and includes any place or places of religious worship, instruction or training which are appurtenant to the institution.

Section 2 (23) defines "**Religious Institution**" as under :

'Religious Institution' means a math, temple or specific endowment and includes a Brindavan, Samadhi or any other institution established or maintained for a religious purpose.

Section 2 (29) defines "**Trustee**" as under :

"trustee" means any person whether known as mathadhipathi, Mahant, dharmakarta, mutuawally, muntazim or by any other name, in whom either alone or in association with any other person, the administration and management of a charitable or religious institution or endowment are vested; and includes a Board of Trustees.

As can be seen from the above definitions, religious institution includes a math. Similarly the definition of trustee includes mathadhipathi or mahant in whom the administration and management of a charitable religious institution are vested.

Thus, it is clear that mathadhipathi is a trustee of the math in relation to the management of the property of the math or the specific endowment attached to the math. If Section 93 of the Act is read in the light of the above definitions of 'religious institution' and 'trustee', it is clear that the Government is competent to call for and examine the record in respect of any administrative or quasi-judicial decision taken or order passed under the Act by the Commissioner or **any Executive Officer or any Trustee of a charitable or religious institution or endowment other than a math or specific endowment attached to a math**. Since the words "**other than a math or specific endowment attached to a math**" are employed only with reference to the orders passed by an Executive Officer or a Trustee, but not with reference to the orders passed by the Commissioner or other officers subordinate to him, it is clear that the math or specific endowment attached to a math has been exempted only with regard to the orders passed or decisions taken by the trustee of a charitable or religious institution or endowment. In other words, what is excluded from the purview of Section 93 of the Act is only the examination of the record of the Trustee (mathadhipathi) of a math or specific endowment attached to a math, but not the record of the Commissioner relating to a math or specific endowment attached to a math.

Hence, as rightly contended by the learned Government Pleader the exemption under Section 93 (1) of the Act is only to the extent of the examination of the record relating to the orders passed by a trustee i.e., mathadhipathi with regard to a math or specific endowment attached to a math and nothing more than that.

Therefore, the objection raised by the learned Counsel for the petitioner that the order of the Commissioner of Endowments, dated 6-7-2000 passed under Section 53 (1) of the Act according sanction to the petitioner to succeed to the office of mathadhipathi is not amenable to the powers of revision under Section 93 of the Act is not well founded and cannot be accepted.

So far as the other contention raised by the learned counsel for the petitioner that the *suo motu* power of revision under Section 93 of the Act is vitiated by unreasonably long delay is concerned, the learned Government Pleader submits

that since no limitation as such is prescribed for the exercise of revisional power *suo motu,* it cannot be said that the revision was barred by limitation.

It is not in dispute that under Section 93 of the Act the Government is empowered to exercise the powers of revision either suo motu or on an application. As per Sub-section (4) of Section 93, the revisional power if exercised o n an application, a limitation of 90 days is prescribed. However, no limitation is prescribed for exercise of such power suo motu. In the case on hand, admittedly the power of revision was invoked by the Government suo motu under Section 93 of the Act to examine the record of the Commissioner in respect of the order dated 6-7-2000 passed by him under Section 53 (1) of the Act. As can be seen, the proceedings were initiated by issuing a show-cause notice dated 10-10-2002 calling upon the petitioner to explain as to why his appointment as permanent Mahant shall not be cancelled. Thus, it is clear that the suo motu power of revision was sought to be invoked after more than two years.

The learned Senior Counsel for the petitioner contends that since 90 days time has been prescribed for exercising the powers of revision on an application, even for initiation of suo motu revisional proceedings the same limitation of 90 days would apply. Thus, according to the learned Counsel, the impugned proceedings initiated by the Government under Section 93 of the Act are clearly barred by limitation.

As held by the Supreme Court in STATE OF GUJARAT v. P. RAGHAV, even though no period of limitation is prescribed under the statute the power has to be exercised within a reasonable time and the length of the reasonable time must be determined on the basis of the facts of the case and the nature of the order which is being revised.

While referring to the decided cases regarding the said proposition of law, in a latest decision in COLLECTOR & ORS. v. P.MANGAMMA & ORS., the Apex Court observed as follows:

"It would be hard to give an exact definition of the word "reasonable". Reason varies in its conclusions according to the idiosyncrasy of the individual and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic stands now like the jingling of a child's toy. But mankind must be satisfied with the reasonableness within reach; and in cases not covered by authority, the decision of the judge usually determines what is "reasonable" in each particular case; but frequently reasonableness "belong to the knowledge of the law, and therefore to be decided by the Courts". It was illuminatingly stated by a learned author that an attempt to give a specific meaning to the word "reasonable" is trying to count what is not number and measure what is not space. It means prima facie in law reasonable in regard to those circumstances of which the actor, called upon to act reasonably, knows or ought to know … … … As observed by Lord Romilly M.R. in LABOUCHERE v. DAWSON { (1872) L.R. Eg. Ca.325) }, it is impossible a priori to state what is reasonable as such in all cases. You must have the particular facts of each case established before you can ascertain what is reasonable under the circumstances. Reasonable, being a relative term is essentially what is rational according to the dictates of reason and not excessive or immoderate on the facts and circumstances of the particular case."

Thus, it is clear that whether the time within which the suo motu power is exercised is reasonable or not, requires to be decided basing on the facts and circumstances of a particular case and the nature of the order sought to be varied.

In the instant case, it is not as if the 1st respondent – State Government was not aware of the fact that the petitioner had succeeded to the office of mathadhipathi which was followed by pattabhishekam performed on a grand scale, for which purpose sanction was accorded for incurring necessary expenditure by the Commissioner. In the counter-affidavit filed on behalf of the respondents, the delay in initiating suo motu proceedings under Section 93 of the Act was explained stating that the fact that the appointment of the petitioner as permanent mahant was not in conformity with the statutory provisions came to light only while examining the record for the purpose of W.P.No.4326 of 2002 filed by the petitioner seeking a direction to remove the custodian.

At the outset, it is to be noted that in pursuance of the orders of the

Commissioner of Endowments, dated 6-7-2000 according permission to the petitioner to succeed to the office of mathadhipathi, the petitioner assumed charge and had been functioning as such for more than two years by the date of the show-cause notice dated 10-10-2002. Under the scheme of the Act, the petitioner is liable to be removed from the office of mathadhipathi only in the circumstances enumerated under Section 51 of the Act which do not include the ground that his succession to the office of Mathadhipathi itself was in violation of the statutory provisions. That apart, the Act does not provide for an Appeal so far as the permission granted by the Commissioner under Section 53 (1) of the Act. In the circumstances, in exercise of the suo motu revisional powers under Section 93 of the Act if the Government seeks to unsettle the rights acquired by the petitioner as mathadhipathi, it is expected to act within a reasonable time. Having regard to the facts and circumstances of the present case and particularly keeping in view the fact that the suo motu revisional proceedings were initiated only after the petitioner filed W.P.No.4326 of 2002 for removal of the custodian appointed for managing the secular affairs of the mutt, I find force in the contention of the petitioner that initiation of suo motu revisional powers was not bona fide, but it was only to defeat the legitimate rights acquired by the petitioner as mathadhipathi to manage the secular affairs of the mutt apart from religious functions. Keeping in view the circumstances under which the State Government sought to revise the proceedings of the Commissioner dated 6-7-2000 and particularly the nature of the proceedings dated 6-7-2000, which recognised the right of the petitioner to succeed to the sacred office of the Mathadhipathi, in my considered opinion the period of more than two years is undoubtedly unreasonable for exercising the suo motu powers under Section 93 of the Act.

Now, the question that remains for consideration is whether the finding recorded by the State Government that the proceedings of the Commissioner of Endowments, dated 6-7-2000 were in gross violation of the Rules issued under G.O.Ms.No.218, Revenue (Endowments-I) Department, dated 17-03-1988 is sustainable.

As can be seen from the show-cause notice dated 10-10-2002, extracted above, the alleged violation of statutory provisions while granting sanction by the Commissioner under the proceedings dated 6-7-2000 are as under :

i. *Since the previous mahant Sri Sarjudass was removed for mismanagement and no person was nominated by him as his successor, the provisions of Sub-section (2) of Section 54 of the Act and the Rules made thereunder shall be followed for filling up the permanent vacancy of mathadhipathi. However, the Commissioner of Endowments erroneously issued orders dated 6-7-2000 under Section 53 of the Act.*

ii. *As per Rule 8 of the Rules made under G.O.Ms.No.218, dated 17-03-1988 under Section 54 (2) of the Act, the Commissioner has to convene a meeting of the mathadhipathis of the other mutts of the same sampradayam after due publication of notice at least one month in advance. No such meeting was convened by the Commissioner.*

iii. *Whereas Rule 7 of the Rules under G.O.Ms.No.218, dated 17-03-1988 which expressly requires that the successor mathadhipathi shall give an undertaking in the form specified by the Commissioner, no such undertaking was obtained from the petitioner.*

The contention of the respondents is that since this is a case where Sri Sarjudass, the then Mathadhipathi failed to nominate his successor while he was in office, Sub-section (2) of Section 54 of the Act is attracted and therefore the Commissioner ought to have convened a meeting with the mathadhipathis of the other maths of the same sampradayam following the procedure prescribed under Rule 8 of the Rules made under G.O.Ms.No.218, dated 17-03-1988. Since no such procedure was followed, but the proceedings of the Commissioner of Endowments, dated 6-7-2000 were issued according sanction to the petitioner to succeed to the office of mathadhipathi under Sub-section (1) of Section 53 of the Act, the said proceedings which are in gross violation of the statutory provisions are ex facie illegal and void. Thus, it is contended that the State Government had rightly set aside the proceedings of the Commissioner dated 6-7-2000 in exercise of suo motu revisional powers under Section 93 of the Act.

I do not find any substance in the above contention raised by the respondents.

Sections 53 and 54 of the Act may be extracted hereunder:

*"**53. Filling of permanent vacancies in the office of mathadhipathi :--** (1) Where a permanent vacancy occurs in the office of the Mathadhipathi, by reason of death or resignation or on account of his removal under Section 51 or otherwise the person next entitled to succeed, according to the rule of succession laid down by the founder, or where no such rule is laid down, according to the usage or custom of the math, or where no such usage or custom exists according to the law of succession for the time being in force, shall with the permission of the Commissioner succeed to the office of the Mathadhipathi.*

(2) A person for succession to the office of the mathadhipathi under Sub-section (1) shall possess the following qualifications, namely :--
(a) basic knowledge of the Hindu Religion and philosophy;

(b) Knowledge of the relevant scriptures and sampradaya to which the math belongs;

(c) capacity to impart the knowledge and preach the tenets of the math to the disciples;

(d) religious temperament with implicit faith in discipline and practice; and

(e) unquestionable moral character."

*"**54. Nomination of mathadhipathi :--** (1) Subject to the provisions of Section 53, a mathadhipathi may nominate his successor. The fact of such nomination shall be intimated to the Commissioner, within ninety days of such nomination and the Commissioner may recognize such nomination. A nomination shall not be complete unless it is recognized by the Commissioner. The conditions for recognition shall be such as may be prescribed.*

(2) Where a Mathadhipathi fails to nominate his successor under sub-section (1) or where there is no mathadhipathi, the Commissioner or any officer authorised by him shall after due publication convene a meeting with the matahdhipathis of other maths of the same sampradayam and the disciples of the math and recognize the person

nominated in such meetings as a mathadhipathi subject to the provisions of this Act. The procedure for convening the meeting and method of publication shall be as may be prescribed."

The heading of Section 53 itself clearly indicates that it deals with a situation when a permanent vacancy occurs in the office of Mathadhipathi either by reason of death or resignation or on account of removal of mathadhipathi or otherwise. A bare reading of Section 53 (1) shows that such permanent vacancy shall be filled up by succession. Sub-section (1) of Section 53 of the Act recognizes the right of succession according to the rule of succession laid down by the founders or where no such rule is laid down according to the usage or custom of the math. If there is no usage or custom, the succession will take place according to the law of succession for the time being in force. However, such succession shall take place with the permission of the Commissioner. Sub-section (2) of Section 53 of the Act prescribes the qualifications to be possessed by a person for succession to the office of mathadhipathi under Sub-section (1) of Section 53.

On the other hand, Section 54 deals with an entirely different situation where the existing mathadhipathi nominates his successor. As per Sub-section (1) of Section 54 of the Act, a mathadhipathi may nominate his successor and the same shall be intimated to the Commissioner within 90 days. However, such nomination shall not be complete unless it is recognised by the Commissioner following the procedure prescribed under the Rules. In case the mathadhipathi fails to nominate his successor or where there is no mathadhipathi, as per Sub-section (2) of Section 54 of the Act, the Commissioner or any Officer authorised by him shall after due publication convene a meeting with the mathadhipathis of other maths of the same sampradayam and the disciples of the math and recognize the person nominated in such meeting as a mathadhipathi subject to the provisions of the Act.

The conditions for recognition of nomination under Sub-section (1) of Section 54 and the procedure for convening the meeting and the method of publication under Sub-section (2) of Section 54 of the Act have been prescribed under **Administration of Math Rules, 1987**, issued under G.O.Ms.No.218, dated 17-03-1988. Sub-rule (2) of the Rule 3 of the said Rules made in exercise of the powers

conferred by Section 54 (1) & (2) of the Act read with Section 153 of the Act provides for the procedure to be followed by the Commissioner while recognizing the successor nominated by the mathadhipathi under Sub-section (1) of Section 54 of the Act. Similarly, Rule 8 of the said Rules provides for the procedure to be followed by the Commissioner or any Officer authorised by him to convene the meeting of the mathadhipathis of the maths of the same sampradayam as provided under Sub-section (2) of Section 54 of the Act and with regard to the publication of the notice.

Thus, Section 53 and Section 54 of the Act are quite different and distinct and there is no overlapping. Whereas Section 53 deals with the procedure to be followed for filling up a permanent vacancy in the office of Mathadhipathi, Section 54 (1) provides for the procedure to be followed when an existing Mathadhipathi nominates his successor. Even Sub-section (2) of Section 54 provides for a situation where the existing Mathadhipathi fails to nominate his successor and there is absolutely no reason to presume that Sub-section (2) of Section 54 is attracted when a permanent vacancy arises in the office of Mathadhipathi. There is nothing in the Act to indicate either expressly or by implication that Sub-section (2) of Section 54 of the Act would apply when a permanent vacancy occurs in the office of Mathadhipathi.

It is also relevant to note that Section 54 of the Act begins with the words '**subject to the provisions of Section 53**'. This itself makes clear the intention of the Legislature that the provisions of Section 54 of the Act shall not override the provisions of Section 53 of the Act. Hence, whenever a permanent vacancy to the office of Mathadhipathi occurs, it shall be filled up only in accordance with Sub-section (1) of Section 53 of the Act and Sub-section (2) of Section 54 has no application at all.

In the case on hand, consequent to removal of Mahanth Sri Sarjudass from the office of Mathadhipathi, the petitioner was initially appointed by the State Government as interim mahant on temporary basis on 7-9-1990. While he was continuing as such, Sri Sarjudass died on 20-10-1999. Thus, it is not in dispute that a permanent vacancy arose in the office of mathadhipathi and therefore clearly Sub-section (1) of Section 53 of the Act is attracted which provides for filling of permanent

vacancies in the office of mathadhipathi.

It is relevant to note that admittedly succession to the office of mathadhipathi of the mutt is regulated by custom which provides that upon the death of a mahant, his senior disciple becomes the next mahant, however subject to the condition that the senior disciple must be a North Indian Brahmin. In DIGYA DARSHAN RAJENDRA RAM DOSS v. DEVENDRA DOSS, the Supreme Court, while dealing with a dispute regarding the succession to the office of the very same mutt (Sri Swamy Hathiramji Mutt) reiterated the said principle. The learned Counsel for the respondents does not dispute the same.

It is also not in dispute that the petitioner is a disciple of Sri Devenderdass and entitled to succeed to the office of mathadhipathi. As a matter of fact, in the proceedings dated 6-7-2000, the Commissioner had referred to a report of the custodian of the mutt dated 30-09-1999 in which it was found that the petitioner was the only available claimant since Sri Sarjudass, the other disciple of Sri Devenderdass expired and Sri Devenderdass, the guru of the petitioner who resigned from the office of mathadhipathi was functioning as Adhikari in the same mutt. It is relevant to note that after the death of Sri Sarjudass on 20-10-1999, the Akhada Panchayat consisting of mahants, sants and sadhus was held on 1-11-1999 on the occasion of the obsequies of Sri Sarjudass and in the said Akhada Panchayat it was accepted that the petitioner would be succeeded as mathadhipathi. It was observed by the Akhada Panchayat that late Sri Sarjudass had no disciples and as per the custom of the mutt it was declared that the petitioner had succeeded to Gadi of mahant of Hathiramji Mutt and its properties. Again on 08-10-2000 the Akhada Panchayat met on the occasion of the pattabhishekam of the petitioner after he assumed charge as mathadhipathi and the petitioner was accepted as 21st Mahanth of Sri Hathiramji Mutt by all the heads of the maths who attended the Akhada Panchayat.

Either in the show-cause notice 10-10-2002 or in the impugned order dated

10-07-2003, the respondents did not dispute the fact that the petitioner was a disciple of Sri Devenderdass Ji, nor made any allegation that he was not qualified to succeed to the office of mathadhipathi, however the only objection raised was that the order dated 6-7-2000 passed by the Commissioner of Endowments was without jurisdiction since the same was not in conformity with the statutory provisions i.e., Rules 7 and 8 of the Rules made under G.O.Ms.No.218, dated 17-03-1988.

Therefore, as per the custom of the mutt, the petitioner is entitled to succeed to the office of mathadhipathi and when he made such a request, the Commissioner of Endowments having made the necessary enquiries and having been satisfied as to the entitlement of the petitioner to succeed to the office of mathadhipathi, issued the proceedings dated 6-7-2000 under Section 53 (1) of the Act, granting permission to the petitioner to succeed to the office of the mathadhipathi. The said order is in accordance with law and does not suffer from any error of fact or law.

As expressed above, since admittedly a permanent vacancy arose in the office of the mathadhipathi of the mutt, the same has to be filled up only in accordance with Sub-section (1) of Section 53 of the Act. Section 54 of the Act which apparently does not deal with filling of permanent vacancy in the office of mathadhipathi, but only provides for nomination by an existing mathadhipathi has no application at all to the facts of the case. Consequently, the Rules made under G.O.Ms.218, dated 17-03-1988 which were made in exercise of the powers conferred by Sub-sections (1) & (2) of Section 54 of the Act also have no application. Hence, the allegation that the proceedings of the Commissioner, dated 6-7-2000 are in violation of the Rules made under G.O.Ms.No.218, dated 17-03-1988 is untenable and without any basis.

The said proceedings dated 6-7-2000 are in accordance with law and do not suffer from any infirmity and therefore the State Government ought not to have set aside the same.

Thus, even on merits, the impugned order dated 10-07-2003 passed by the

State Government is illegal and unsustainable and liable to be set aside.

Accordingly, the impugned order dated 10-07-2003 is set aside and W.P.No.14856 of 2003 is allowed.

In view of the finding recorded on Point No.1, W.P.No.4326 of 2002 is also allowed thereby setting aside the order of the Commissioner of Endowments, dated 6-7-2000 under which the custodian was continued to manage the secular affairs of the mutt. Consequently, there shall be a direction to the respondents to hand over the management of secular affairs of the mutt including its properties, to the petitioner forthwith.

In the result, both W.P.Nos.4326 of 2002 and 14856 of 2003 are allowed. No costs.

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G. ROHINI, J.

Dt.27–01-2006.

Note:- LR copy to be marked.

(B/O) Kgr/gbs

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THE HON'BLE Ms. JUSTICE G. ROHINI

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W.P.Nos.4326 of 2002 & 14856 of 2003

27th January, 2006.

Between:

H.H. Arjun Doss Mahant,

Disciple of Guru Devender Dass,

48 years, Sri Swamy Hatiramji Math,

Tirumala, Tirupati. **Petitioner**

(in both the W.Ps.)

And

The Commissioner of Endowments

Endowment Department, Tilak Road,

Hyderabad and two others. Respondents

(in both the W.Ps.)